

# Obesity treatments and tax deductions

A Taxpayer's Guide on IRS Policy to Deduct Weight Control Treatment. The Internal Revenue Service (IRS) has changed its policy regarding how taxpayers may deduct the costs of weight loss/ weight control programs.

The following are interpretations of the American Obesity Association regarding the IRS policy. We want to emphasize that this is our interpretation, not an official interpretation. Consult your professional tax adviser on how this new policy affects your specific tax situation.

## 1. What has changed?

The IRS sets out its policy on the Medical and Dental Deduction in Publication 502 each year.

**New Policy:** The new Publication for 2000 provides at page 11, "You can include in medical expenses the cost of a weight-loss program undertaken at a physician's direction to treat an existing disease (such as heart disease). But you cannot include the cost of a weight-loss program if the purpose of the weight control is to maintain your general good health."

**Old Policy:** The previous publications stated, "You cannot include the cost of a weight loss program for your general health even if your doctor prescribes the program."

## 2. What does the policy change mean?

Previously, the language was so strict that all treatments for weight loss were excluded. Now the IRS has clearly stated new criteria allowing a wide array of costs for weight loss programs to be deducted by taxpayers.

## 3. Who is eligible for the deduction?

There are three categories of persons who may be eligible. First, taxpayers who itemize their deductions can add these costs to the costs of medical and dental expenses. Within this category, taxpayers can only deduct medical and dental expenses that exceed 7.5 percent of their adjusted gross income and that are not reimbursed.

Second, many employees have medical savings accounts (MSAs) through their employers. MSAs use the same definitions of medical expenses, as do individual taxpayers. Therefore, employees can use their MSAs for weight loss programs if undertaken at a physician's direction to treat an existing disease.

Third, many employers provide Flexible Savings Accounts (FSAs) that may provide this coverage. FSAs, also, use the same definitions of medical expenses, as do individual taxpayers.

## 4. Do I have to be overweight or obese to be eligible for the deduction?

The IRS did not use those terms. The eligible taxpayer must have a disease that is likely to benefit from weight loss treatment such as heart disease, hypertension, high cholesterol, type 2 diabetes.

## 5. Is obesity itself a disease?

Yes. Obesity is a listed disease in the International Classification of Diseases (ICD-9-CM). The ICD-9-CM is published by the World Health Organization and is the definitive compilation of diseases; the United States Public Health Service uses it.

Obesity also is recognized as a disease by the U.S. Food and Drug Administration (FDA) and the Social Security Administration. Obesity is defined as excessive body fat usually measured as 30 pounds or more over ideal body weight or a Body Mass Index of 30 or more.

**6. What is the definition of a “weight-loss program”?** AOA interprets “weight-loss programs” to include bariatric surgery, FDA approved weight-loss drugs, physician and hospital-based programs, behavioral counseling, the services of physicians, dietitians and nutritionists as well as commercial-like programs that are specific for weight loss and maintenance.

**7. What about weight maintenance programs?**

Maintaining a weight loss after a weight loss should qualify for the deduction.

**8. What expenses cannot be deducted?**

Under separate sections of Publication 502, the following expenses are not deductible: health club dues, nutritional supplements, over-the-counter products, low-fat foods, exercise equipment. Liposuction is regarded as cosmetic surgery and would not be deductible under this new provision.

**9. What does “weight control is to maintain your general good health” mean?**

We assume this means an individual who is in good health and is engaged in a program to maintain their health status.

**10. What does “undertaken at a physician’s direction” mean?**

Again, the IRS did not define its term. We assume the language means that you must be able to document that your physician told you to lose weight. It is probably prudent for you to make a note for your files when your doctor told you to lose weight. Note that the weight loss program itself does not have to be under physician direction. It would be sufficient if a physician directed you to lose weight.

**11. How is the IRS going to enforce this policy?**

Traditionally, the IRS would rely on audits of taxpayer returns. Audits for the express reason of the medical deduction are rare unless very large medical deductions are claimed in relationship to the income reported. But it could come up in routine audits.

If asked, taxpayers are expected to be able to produce documentation of their deductions going back three years (sometimes up to six years). Therefore, it is wise to obtain your doctor’s instruction in writing now. The IRS would probably be less accepting of a letter from your doctor two years after the weight loss program is started. If the IRS otherwise believes the policy is being abused it can revert to the previous policy or alter the new policy.

**12. What is the background of this change?**

On Sept. 14, 1999, the American Obesity Association and nine other organizations—American Association of Bariatric Physicians, American Society for Bariatric Surgery, Health Management Resources, Inc., Jenny Craig, Inc., Knoll

Pharmaceutical Co., Novartis Nutrition Corp., Obesity Law and Advocacy Center, Shape Up America!, Tanita Corp., and Weight Watchers Intl., Inc.— filed a petition with the Internal Revenue Service seeking a revision in Revenue Ruling 79-151.

It was that Revenue Ruling that provided the basis of the information in the IRS Publication. After a response from the IRS for additional information, the AOA provided extensive and detailed information to the IRS on March 20, 2000. During this period, many of the participating organizations wrote directly to the IRS or to Members of Congress in support of the change.

**13. Do I have to show an actual improvement in health to be eligible for the deduction?**

No. The treatment does not have to be successful for the expense to be deductible.

**14. I had a lot of expenses for weight loss last year and some maintenance expenses this year. Can I amend my taxes for last year to reflect the new policy?**

You should be able to. We would suggest consulting your professional tax adviser before submitting an amended tax return.

*AOA Publication (12/00)*

*Revised: 10/19/99*

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